



WILLIAM A. BELL, SR.
MAYOR

CITY OF BIRMINGHAM

FINANCE DEPARTMENT

PURCHASING DIVISION

P-100 CITY HALL
710 NORTH 20TH STREET
BIRMINGHAM, ALABAMA 35203-2227

TELEPHONE (205) 254-2265
FAX (205) 254-2484

November 21, 2012

J. THOMAS BARNETT, JR.
FINANCE DIRECTOR

RON NICKEL
PURCHASING AGENT

WILLIAM E. CAFFEE
ASSISTANT PURCHASING AGENT

INVITATION TO BID #12-84

The City of Birmingham (City) is requesting sealed bids for nurse services for inmates who are detained at the City Jail (the "Services"). The Services may be performed for a period of three (3) years. Bids will be received by the Purchasing Agent, Room P-100 City Hall, Birmingham, Alabama until 2:00 p.m., December 27, 2012, at which time and place they will be publicly opened and read.

Bidders wishing to bid can download the complete solicitation including the specifications and bid forms via the internet at www.birminghamal.gov (go to link titled **Bidding Opportunities**), or by visiting the Purchasing Office at the address shown above, or by calling (205) 254-2265, fax (205) 254-2484 and requesting a copy be mailed to you. Any addenda to the bid will be available on the internet. Bidder is responsible for checking the website for addenda until bid opening date. Addenda will only be mailed to those vendors who were provided a copy in person or by mail.

Bids are to be submitted on the bid form provided, and all quotations are to be f.o.b. Birmingham, Alabama delivered.

The City's standard payment term for Services provided is Net-30 Days from acceptance of Contractor's monthly invoices. **The City will not consider any bids requiring C.O.D. payments.**

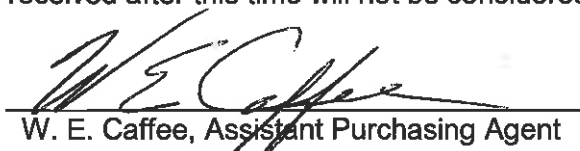
Bidder is required to submit with its bid a certified check, a cashier's check or a bid bond payable to the City of Birmingham in the amount of \$10,000.00. In order for any bid award to be considered, it must be accompanied by an acceptable bid bond or check. Bid bond checks will be returned to all unsuccessful bidders after formal award is made and to the successful bidder after acceptance of award. Should the successful bidder fail to accept the award, the bid bond or check shall be forfeited.

No bid may be withdrawn for a period of sixty (60) days after the date of the bid opening. The City reserves the right to reject any or all bids submitted in whole or part, and to waive any informality.

This bid process and the contract that is contemplated to be awarded in connection herewith are governed by the laws of the State of Alabama.

Bids must be submitted in a sealed envelope marked, **"SEALED BID - CONTRACT NURSE SERVICE - 2:00 P.M., 12-27-12"**. Bids may be hand delivered to Room P-100 1ST Floor, City Hall, Birmingham, Alabama or mailed to the City of Birmingham, P. O. Box 11295, Birmingham, Alabama, 35202-1295 (**DO NOT MAIL BIDS TO ROOM P-100 1ST FLOOR CITY HALL**). However, bids sent by any express carrier (Federal Express, UPS, DHL, etc.) must be mailed to 710 North 20th Street, Birmingham, Alabama, 35203 and specify delivery to Room P-100 1st Floor, City Hall.

It is the bidder's responsibility to make sure that its bid is in the possession of the Purchasing Agent on or before 2:00 p.m., December 27, 2012. Bids received after this time will not be considered.


W. E. Caffee, Assistant Purchasing Agent

B.N. 11/28/12

SPECIFICATIONS FOR NURSE SERVICES

GENERAL:

The City is seeking bids for nursing service for inmates detained at the City Jail (the "Services") or any other City location that may require such services in the future. The City intends to award a contract for the Services to the lowest responsive, responsible bidder. The contract will commence from the date noted in a Notification of Award letter to be mailed to the successful Contractor, and thereafter may remain in effect for up to three (3) years.

The successful bidder (also referenced herein as "Contractor") will enter an agreement with the City in substantially the form of the Nursing Services Agreement (the "Agreement" or "contract") that is included herein.

Only bids from established nursing service companies which have been operating successfully for a minimum of three (3) years continuously in the Birmingham area will be considered eligible for award. Any bid submitted must be accompanied by documentation which will adequately demonstrate the company's ability to provide the service required.

No bid may be withdrawn for a period of sixty (60) days after the date of the bid opening.

Each bidder is to extend prices and provide a total for the bid being submitted. In order for any bid award to be considered your bid must have been accompanied by an acceptable bid bond, certified check or cashier's check in the amount of \$10,000.00. Bid bond checks will be returned to all unsuccessful bidders after the formal award is made and to the successful bidder after acceptance of award. Should the successful bidder fail to accept the award, the bid bond check shall be forfeited.

The City of Birmingham must have a copy of the successful bidder's current City of Birmingham business license prior to formal award of contract. Each bidder may submit a copy of his/her license along with its bid. However, bidder must provide a copy of his/her current business license no later than seven (7) working days of receipt of notice of intent to award. Failure to submit the requested information will result in the notice of intent to revoke an award.

Any successful bidder who is not currently set up as a vendor in the City of Birmingham vendor file will be required to submit a completed W-9 tax form prior to any award. The W-9 tax form may be submitted with your bid or no later than seven (7) working days of receipt of notice of intent to award.

The successful bidder shall not assign the contract (or any responsibilities, rights or benefits thereunder) to any other party without prior written approval of the City. Further, the successful bidder shall not assign the contract to an unsuccessful bidder who was rejected because it was not a responsive or responsible bidder.

The successful bidder will be required to satisfy the insurance requirements that are set forth in the Nursing Services Agreement included herein. These requirements include that, before the commencement of Services, the Contractor must provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing proof of coverage and compliance with the requirements.

Should the contract awarded hereunder be terminated for the Contractor's failure to perform its duties, that party may be declared a non-responsible vendor and not be allowed to submit bids for future awards for a period of time to be determined by the City.

Contractor (and its employees, agents and any subcontractors) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Services contemplated hereunder. Failure by the Contractor to carry out these requirements is a material breach of its obligations, which may result in its termination or such other remedy as the City deems appropriate.

Contractor acknowledges and agrees that, consistent with federal law and City's public policy, it will encourage participation by disadvantaged business enterprises (DBE) to the extent permitted by law. A "disadvantaged business enterprise" is a for-profit small business concern (i) at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (ii) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In accordance with federal law, a "socially and economically disadvantaged individual" includes African-Americans, Hispanic Americans, Native Americans, Asian-Americans, women, and any additional groups designated as socially and economically disadvantaged by the Federal Small Business Administration.

If the successful Contractor is located in the State of Alabama or located outside of the State of Alabama, but employs one or more employees within the State of Alabama, it represents and warrants that it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien", as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (H.B.56) of the Alabama Legislature, as amended from time to time (the "Act") and that, during the performance of this contract, Contractor shall participate in the E-Verify program as required under the term of the Act. Contractor further agrees to comply with all applicable provisions of the Act. As a condition for the award of any contract, Contractor shall provide documentation establishing that the Contractor is enrolled in the E-Verify program, or a signed, written statement that the Contractor does not have a presence (one or more employees) in the State of Alabama. Contractor may submit applicable documentation with its bid or no later than seven (7) working days of receipt of notice of intent to award.

Any questions concerning these specifications should be addressed to the Purchasing Division at 205-254-2265, fax 205-254-2484 between the hours of 8:00 a.m. and 4:00 p.m. CST, Monday through Friday.

ADDITIONAL SPECIFICATIONS

The following specifications, conditions and understandings apply with respect to the performance of Contractor's Services during the term of the contract:

1. Contractor will furnish Licensed Practical Nurse(s) (LPNs) to perform Services. The use of Registered Nurses (RNs) is not required herein, but Contractor may elect to furnish RNs to perform Services. However, if Contractor so elects to utilize RNs, the compensation for that work by RNs will be billed by the Contractor and paid by the City at the LPN hourly rate set forth on the Contractor's Bid Form.
2. The City, at its sole expense, will supply all medical supplies routinely used by nurses while performing Services.
3. The Contractor is not granted an exclusive right to perform Services. At its sole discretion, the City, at any time during the term of the contract, may procure the services of additional nurses at the City Jail by utilizing its own employees, by retaining nurses from other agencies or through other means.
4. Before performing Services, nurses furnished by Contractor will attend an orientation program concerning operations at the City Jail.
5. Prior to the commencement of the contract and at other times during the term, the City will provide Contractor information on City policies and procedures that relate to entering or exiting the Jail, accessing various areas at the Jail, security measures at the Jail, and the procedures for interacting there with inmates in the performance of Services. Contractor agrees to furnish these policies and procedures to the nurses it furnishes, and that its personnel will comply with those throughout the term of the contract.
6. Contractor will perform Services at times requested by the City. The contract representatives for the parties will confer before the effective date of the Agreement and regularly during its term to determine the schedules, hours, and names of nurses assigned by Contractor to perform Services.
7. Utilizing the hourly rate for LPN Services stated on the Contractor's Bid Form, the City, on monthly basis, will compensate Contractor for the number of hours of LPN Services that are performed during each month of the Agreement. The amount payable by the City to Contractor for its Services will be calculated by multiplying the total number of hours worked by all nurses during the applicable billing period times the hourly rate on Contractor's Bid Form. The City does not guarantee any minimum amount of Services or that it will pay Contractor any minimum number of hours.

When the Agreement first becomes effective, the City anticipates that it will require Services on the following schedule:

(a) Services will be performed on a 24 hour a day, 7 day a week, 365 days per year basis.

(b) The following number of LPNs will be required: (a) one (1) LPN during the Jail's day shift (7:00 a.m. - 3:00 p.m.); (b) one (1) LPN during the Jail's evening shift (3:00 p.m. - 11:00 p.m.); (c) one (1) LPN during the period between 4:30 p.m. - 11:00 p.m.; and (d) one (1) LPN during the Jail's morning shift (11:00 a.m. - 7:00 a.m.).

(c) On the Effective Date of the Agreement, the City anticipates that it will employ at least one nurse who will provide nursing services at the City Jail (the "City Employed Nurse") during the day shift Monday-Friday. It is anticipated that the City Employed Nurse may be absent from duty the City Jail for approximately 320 hours annually during each calendar year. In addition to providing the Services set forth above in (a) and (b), Contractor will provide an additional LPN who will fill in for the City Employed Nurse and perform Services during that person's absence from his/her standard shift.

These anticipated, initial scheduling requirements are subject to change at any time over the life of the Agreement. The City, for budgetary or any other reason, reserves the right to increase or decrease the number of hours of Services it requires over the term of the Contract on an as-needed basis.

8. The City's standard payment term for Services provided is Net-30 days from acceptance of monthly invoices from the Contractor. Exception may be allowed for discounted early payment, such as 2%-10, Net 30 Days. The reference date for all such discounted early payment terms will be the date the invoice is received or the date the service was provided, whichever is later; in the event of a dispute of date or dates, the City's records shall prevail. The successful bidder acknowledges and agrees that the City has the right to deduct from total amount of consideration to be paid, if any, to the successful bidder under this agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from the successful bidder.

9. Contractor agrees to perform nursing Services consistent with the standard of professional skill and care that would be provided by other nurses under the same and similar conditions.

10. Nurses furnished by Contractor will utilize their skills, training and experience to address, diagnose and treat the condition of inmates examined by them; provided, however, in the event that a nurse is unable to diagnose and treat the condition of an inmate, contractor must provide referral service for such situations.

11. The nurses furnished by Contractor to perform Services are not employees, agents or servants of the City. With respect to the work performed by those nurses, Contractor is exclusively responsible for determining and paying them the appropriate levels of compensation (including overtime, if applicable), paying them employee benefits (if any are owed), reporting of income and tax withholdings (if any) associated with their work, and complying with all federal, state or local employment laws and regulations (including, but limited to, the Fair Labor Standards Act) that apply to the Services performed pursuant to the Agreement. Regardless of the number of hours of Services performed by any nurse(s) during a day, week or other period, the City will not reimburse Contractor for any overtime that it may pay the personnel that it furnishes or will not pay the Contractor any premium hourly rate in excess of the Hourly Rate stated on Contractor's Bid Form.

BID FORM

William E. Caffee
Assistant Purchasing Agent
Birmingham, Alabama

Submitted below is my firm bid for contract Nurse Service for a period of three (3) years, in accordance with the City's Invitation to Bid and Specifications dated November 21, 2012. Prices quoted are f.o.b. Birmingham, AL. I am bidding in exact accordance with the Specifications, except as listed below.

Approx Qty	Description	Hourly Rate	Total Price
1st Year			
11,270 hours	LPN Nursing Service	\$	\$
2nd Year			
11,270 hours	LPN Nursing Service	\$	\$
3rd Year			
11,270 hours	LPN Nursing Service	\$	\$
Grand Total			\$

Notes: Award will be based on the lowest responsive, responsible bidder for the combined three (3) year period. However, the number of hours of LPN Nursing Services listed on the Bid Form and supplied to all bidders is an ESTIMATE ONLY. This estimated number of hours is provided solely the purpose of evaluating the bids. The City does not guarantee that the successful bidder will receive compensation for any minimum number of hours during the term of the contemplated contract. Further, although bidders are submitting an hourly rate for all three years of the contemplated contract, the City, at its discretion, may terminate the contract at the end of the first or second year of its term.

EXCEPTIONS TO SPECIFICATIONS:

(Attach Additional Page if Necessary.)

Email Address

Tax ID Number

Name (Print or Type)

Signature

Title

Date of Bid

Company

Street Address

Post Office Box (zip if different)

City State Zip

Terms of Payment

Delivery Date

Telephone Number

Fax Number

NURSING SERVICE AGREEMENT

This **Nursing Service Agreement** is made between the City of Birmingham, Alabama, a municipal corporation ("City"), and _____ ("Contractor") as of the Effective Date (as defined below).

WHEREAS, in Invitation to Bid #12-84 dated November 21, 2012 (hereinafter, "Bid 12-84"), the City solicited bids from parties interested in performing nursing service for inmates who are detained at the City Jail (the "Services") as described in, and in accordance with the terms, conditions and specifications in Bid 12-84;

WHEREAS, Bid 12-84 and the specifications therein are collectively referenced hereinafter as the "Bid", and its terms and conditions are incorporated herein by reference; and

WHEREAS, Contractor, which submitted the Bid Form that is attached as Exhibit A and incorporated by reference (the "Bid Form"), is the lowest responsive and responsible bidder in response to the Bid.

THEREFORE, for the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and Contractor agree as follows:

1. **General.** The Contractor agrees to perform the Services pursuant to the terms, conditions and provisions in this Nursing Service Agreement and in the Bid (including all specifications therein), which may be collectively referenced hereinafter as the "Agreement." The City agrees to comply with its obligations under the Agreement.

2. **Term/Early Termination.** This Agreement shall become effective on the first day of the month following the date it is last executed by a party (the "Effective Date"), and thereafter will remain in effect for a period of three (3) years (the "Term").

The City may terminate this Agreement prior to the expiration of its Term for any of the following reasons:

(i) **Termination for Cause:** Effective upon written notice to Contractor, the City may terminate this Agreement before its expiration if Contractor fails to perform a material obligation hereunder (a "Default") and it does not cure that deficiency within fifteen (15) days following written notice of the Default from the City. By way of example, matters which constitute a Default by the Contractor include, but are not limited to, repetitive tardiness, failure to cover scheduled shifts, dereliction of duty, and failure to maintain required insurance. The City's right to terminate for a Default by Contractor is non-exclusive, and does not bar the City from pursuing its other available remedies that arise from that Default; or

(ii) **Termination for Convenience:** At its convenience and sole discretion, the City may terminate this Agreement effective at the end of the first or second years of the Term by providing Contractor written notice of City's intent to so terminate at least thirty (30) days prior to the first or second anniversary of the Agreement; or

(iii) **Termination for Non-Appropriation.** Notwithstanding the provisions immediately above or any other provision in the Agreement, the City, effective upon provision of written notice to Contractor, may terminate this Agreement without any liability to pay a termination liability charge, penalty or other obligation to make payment for services or work after the effective date of termination if the City's governing body does not appropriate or allocate funds for payment of City's obligations under this Agreement. In the event of such termination for non-appropriation, the City shall remain obligated to pay for Services or work provided prior to termination.

3. **Billing and Payment for Services.** Contractor agrees that it will submit invoices for compensation of its Services at the prices set forth on the Bid Form. Provided that Services are faithfully performed, the City will compensate Contractor for those Services in accordance with the terms set forth in the Additional Specifications in the Bid and in this Agreement.

4. Professional Standard. Contractor shall perform the nursing Services consistent with the professional skill and care that would be provided by other nurses under same or similar conditions.

5. Compliance with Laws. Contractor agrees that, in performing its Services, it and its representatives will comply with all provisions and requirements in applicable laws, ordinances, rules, and regulations that apply with respect to its work.

6. Safety. Contractor is exclusively responsible for the safety of its employees or representatives in performing the Services, and will perform those Services in a safe manner that does not put at risk the safety of persons (including its own employees or representatives) or endanger property. Before performing the Services contemplated hereunder, the Contractor has inspected the City premises where work will be performed, and acknowledges that it has not identified any condition or hazard on those premises that will prevent it from performing the Services in a safe manner.

7. Insurance Requirements.

(a) Policies/Coverage. For the duration of this Agreement and for limits not less than stated below, the Contractor shall carry the following policies of insurance:

(i) general liability insurance (either primary or a combination of primary and umbrella coverage) with limits of not less than \$3,000,000.00 total with a maximum of \$1,000,000.00 for each occurrence and shall include, but not be limited to, personal injury, property damage, vandalism, property loss and theft;

(ii) professional liability coverage in a minimum amount of \$8,000,000.00.

(iii) Workman's Compensation as required by statute.

All such insurance shall be provided by a policy or policies issued by a company or companies qualified by law to engage in the insurance business in the State of Alabama with a rating of B+ or better according to the most current edition of Best's Insurance reports. Bidder is to provide written documentation of the company's rating with their bid. The Contractor may use umbrella or excess liability insurance to achieve the required coverage, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

(b) City Additional Named Insured. Except for Worker's Compensation coverage, all coverage shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of its work and Services. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policies. Such additional insured coverage shall be at least as broad as Additional Insured endorsement from ISO, CG 2010.1185.

(c) Policies Primary. All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

(d) Waiver of Subrogation. Contractor shall require the carriers of the above-required insurance coverage to waive all rights of subrogation against the City, and its officers, employees, agents, and representatives. Further, Contractor hereby waives any rights of subrogation against the City. All general liability coverage provided herein shall not prohibit the City or its employees, agents or representatives from waiving the right of subrogation prior to loss or claim.

(e) Proof of Coverage. Before the commencement of services or work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. The City's Bid number (#

12-84) must appear on any/all copies of the certificate of insurance. Also, these certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City. In the event that the City is not notified that any of the coverage required herein is to be cancelled or changed in such a manner as not to comply with the requirements of this contract, the Contractor shall, within fifteen (15) days prior to the effective date of such cancellation or change, obtain and provide the City with binder(s) of insurance evidencing the re-establishment of the insurance coverage required herein.

8. Indemnification. Contractor shall defend, indemnify, hold harmless the City of Birmingham, and its agents, employees and officials (hereinafter an "Indemnatee" or "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property) (collectively hereinafter "Claims") by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to, result from, or are attributable to any of the following: (i) Contractor's breach of its professional standard in paragraph 4 above; (ii) Contractor's failure to perform its obligations under this Agreement; (iii) any conditions in or about the work sites that the Contractor or any Contractor Representative may encounter in performing Services; and (iv) Claims arising in whole or part from the negligent acts or omissions of Contractor and Contractor Representatives in performing the Services, regardless whether the Claim is caused or allegedly caused in part by the negligence of an Indemnatee; provided nothing herein shall obligate Contractor to indemnify any of the Indemnatee(s) for Claims resulting from the sole negligence or from the willful misconduct of the Indemnatee(s).

9. Independent Contractor. The Contractor is an independent contractor of the City. Neither the Contractor nor any nurses or other personnel it furnishes is an employee or agent of the City. The City does not control or reserve control over the means or manner by which the Contractor or its representatives performs its responsibilities or the Services hereunder. Further, neither the Contractor nor the City shall be deemed or construed to be a partner, joint venturer or otherwise hold an interest in the organization, assets, or operations of the other party, or be liable for the debts of the other.

10. Contract Representatives. Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Services and administration of this Agreement (the "Contract Representative(s)"). The respective Contract Representatives are:

City

Birmingham, AL 352_____
205-254-_____
Email: _____

Contractor

_____. ____ 352_____
_____-_____
Email: _____

Each Contract Representative shall have the authority to act on behalf of its respective organization to transmit instructions, receive information, and administer this Agreement. Any party may designate a Contract Representative other than the person named above upon provision of written notice.

11. Notices. Any notice required hereunder to be given in writing shall be sufficiently given when sent to the appropriate Contract Representatives via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to that party.

12. Non-Discrimination/Engagement of Disadvantage Business Enterprises.

(a) In connection with its provision of Services, Contractor and the Contract Representatives shall not discriminate on the basis of race, color, national origin, sex, religious orientation or age in the performance of the Services contemplated hereunder or in its own employment practices. Failure by the Contractor to carry out these requirements is a material breach of its obligations, which may result in its termination of the Agreement.

(b) Contractor acknowledges and agrees that, in its performance of the Services and consistent with federal law and the City's public policy, it will utilize and encourage participation by disadvantaged business enterprise (DBEs) to the extent permitted by law. A "disadvantaged business enterprise" is a for-profit small business concern (i) at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (ii) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In accordance with federal law, a "socially and economically disadvantaged individual" includes African-Americans, Hispanic Americans, Asian-Americans, Native Americans, women, and any additional groups designated as socially and economically disadvantaged by the federal Small Business Administration.

13. Immigration Act Compliance. With respect to a contract, grant, bid or incentive that is governed by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (H.B. 56), as amended from time to time (the "Act"), the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an "unauthorized alien" within the State of Alabama as defined by the Act. Further, during the Term of this Agreement, Contractor shall participate in the E-Verify program as required under the terms of the Act, and provide evidence of its registration in the E-Verify program prior to commencing operations under this Agreement.

14. Other Representations and Warranties. As additional inducement for the City to enter this Agreement, Contractor makes the following additional representations and warranties:

(a) that, if Contractor conducts business through a corporation, limited liability corporation, or other similar organization,

(i) it is a duly organized and existing entity that is authorized to perform business under the laws of the State of Alabama, and has the power to enter into and to perform and observe its agreements and covenants in the Agreement.

(ii) all actions required to be taken by it to execute the Agreement, and to perform its covenants, obligations and agreements hereunder, have been duly taken. Those actions may include a resolution duly adopted by its governing body; and

(iii) the execution and performance of the Agreement by Contractor do not constitute and will not cause the breach or violation of any contract, lease, franchise, permit or agreement of any nature to which Contractor is a party;

(b) that it has not employed or retained any firm, entity or person to solicit or secure its selection to enter into this Agreement, and that it has not paid or agreed to pay any fee, commission, percentage, gift or other consideration to any such firm, entity or person that is contingent upon or resulting from the award or making of this Agreement; and

(c) that no part of the public funds to be paid by the City pursuant to this Agreement nor any part of the Services or thing of value whatsoever purchased or acquired by Contractor with said funds shall be paid to or used in any way whatsoever for the personal benefit of any official, member or employee of any federal, state, county, or municipal governmental body whatsoever (or a family member of any of those governmental representatives).

15. **Dispute Resolution.** The parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). Those efforts will include escalation of the Dispute to the senior manager/official level of each party. However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism shall be litigation in a court that is located in Jefferson County, Alabama. If (i) either party should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) one party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the other party, the losing party will pay the prevailing party its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

16. **Miscellaneous Provisions.**

(a) **Licensing.** Before commencing the Services, Contractor, at its expense, will obtain all licenses, permits or other governmental authorizations needed to complete the Services, including without limitation, a business license issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of its Services.

(b) **No Assignment.** Contractor may not assign this Agreement or any of its rights, benefits or obligations hereunder to any other party without prior written approval of the City. In no case will the City approve assignment to an unsuccessful bidder who was rejected because it was not a responsive or responsible bidder.

(c) **Governing Law.** This contract shall be construed under and governed by the laws of the State of Alabama.

(d) **No Third Party Beneficiary.** The Agreement is made only for the benefit of the City and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(e) **Counterparts.** This Agreement may be executed in counterparts, which, when executed by the parties, shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as an original document.

(f) **No Waiver.** Any forbearance or delay on the part of the City in enforcing any of its rights under this Agreement shall not be construed as a waiver of those rights. No terms of this contract shall be waived unless expressly waived in writing.

(g) **Entire Agreement.** This Agreement, the Bid and the Bid Form constitute the entire understanding between the parties concerning the matters herein. Both parties agree that any prior understandings, covenants or representations, whether oral or written, made by either party that are not expressed in this Agreement are merged herein and have no effect. In the event of any conflict in the provisions of the Agreement and the Bid, the provisions in this Agreement shall govern and control.

(h) **Invalidity.** If any provision of this contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(Signature Page Follows)

In Witness Whereof, the undersigned duly authorized representatives of the parties execute this Nursing Service Agreement.

CONTRACTOR

CITY OF BIRMINGHAM, ALABAMA

By: _____

Its: _____

Date: _____

By: _____

Its: Mayor

Date: _____

ATTEST: _____
City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

Assistant City Attorney / Date

EXHIBIT A – BID FORM SUBMITTED BY CONTRACTOR

See attached.